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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 658

LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLANT.

W. B. DICKENSON,
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SUPREME COURT OF THE UNITED STATES

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LAMBIRIS SKIRIOTES,

Appellant,

vs.

THE STATE OF FLORIDA.

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA.

BRIEF OF APPELLANT.

Concised Statement of the Grounds on Which the Jurisdiction of This Court is Invoked.

The jurisdiction of this Court is invoked in this cause under the provisions of the following Acts of Congress authorizing proceedings of this nature: The Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54, he was under the provisions of the Act of Congress of February 13, 1925, being Chapter 229, 43 Stat. 936, entitled to a writ of error, under the provisions of Section

237, Paragraph A, in the Supreme Court of the United States in this cause; said section and paragraph providing:

> "A final judgment or decree in any suit in the highest court of the State in which a decision in the suit could be had, where is drawn in question the validity of a treaty or statute of the United States, and the decision is against its validity, or where is drawn in question the validity of a statute of any State, on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, and the decision is in favor of its validity, may be reviewed by the Supreme Court upon a writ of error. The writ shall have the same effect as if the judgment or decree had been rendered or passed in a court of the United States. The Supreme Court may reverse, modify or affirm the judgment or decree of such State court, and may, in its discretion, award execution or remand the cause to the court in court in which it was removed by the writ."

The Act of Congress of January 31, 1928, being Chapter 14, 45 Stat. 54, provides in Section One, as follows:

> "That the writ of error in cases, civil and criminal, is abolished. All relief which heretofore could be obtained by writ of error shall hereafter be obtainable by appeal."

The Act of Congress of April 26, 1928, being Chapter 440, 45 Stat. 466, Section 2, provides:

> "That the Statute regulating the right to writ of error, defining the relief which may be had thereon, and prescribing the mode of exercising that right and invoking such relief, including the provisions relating to costs, supersedeas and mandate shall be applicable to the appeal which the preceding section substitutes for a writ of error."

This appeal is from a final judgment of the court of last resort in Florida, to-wit, from the final judgment of the

Supreme Court of the State of Florida, (Transcript of Record, pages 36 to 40).

Briefly stated the facts are: That on January 20, 1940, Henry S. Baynard, Prosecuting Attorney of the County of Pinellas, State of Florida, filed an Information (Transcript of Record, pages 10 and 11) charging that the Appellant on the 8th day of March, 1938, knowingly, wilfully and unlawfully maintained and used for the purpose of catching and taking commercial sponges from the Gulf of Mexico within the territorial limits of the State of Florida, to-wit, at a point more than one marine league from mean low tide on the shore line of the State of Florida and Southwest of Anclote Key and Northwest of Hog Island and within three marine leagues of mean low tide on the West shore line of the State of Florida at a point approximately two marine leagues from mean low tide on the West shore line of the State of Florida and within the territorial limits of the County of Pinellas, a diving suit, helmet and other apparatus used by deep-sea divers, and did then and there catch or take commercial sponges from the Gulf of Mexico in violation of the provisions of Section 4 of Chapter 7389, Laws of Florida, enacted in 1917, and re-enacted as Section 8087, Compiled General Laws of Florida, adopted in 1927.

To this Information the Appellant filed a Motion to Quash (Transcript of Record, pages 11 to 18 inclusive) upon the following grounds briefly stated being:

1. That the Information fails to charge any offense against any valid statute of the State of Florida because the place at which the crime was alleged to have been committed was outside of and beyond the territorial limits of the State of Florida, which limits could not extend outside of the territorial limits of the United States; that the statute under which the Information was filed is invalid and un-

enforceable by reason of the fact that it is violative of the provisions of the Constitution of the United States, to-wit, Section One, Article 14, originally adopted as the Fourteenth Amendment of the Constitution of the United States. The pertinent part of this section provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

2. That the statute under which the Appellant was prosecuted violates the provisions of Article 6 of the Constitution of the United States; the pertinent part of Article 6 being found in sub-paragraph 2 in the following language:

> "This Constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

3. That the said Information filed against the Appellant is violative of Article One, Section 10, Paragraph One of the Constitution of the United States; the pertinent part of this section of the Constitution provides:

> "No state shall enter into any treaty, alliance or confederation."

It is therefore apparent that the State could not acquire territory beyond the limits of the United States.

4. That the law of the State of Florida under which the Appellant was being prosecuted violates Article 2, Section 2, Clause 2 of the Constitution of the United States; the pertinent part of this constitutional provision is:

"He (the President) shall have power, by and with the advice and consent of the Senate, to make treaties."

This provision of the Constitution precludes the State from that power.

5. The law of the State of Florida under which the appellant was being prosecuted is violative of Article One, Section 10, Paragraph 3 of the Constitution of the United States; the pertinent part of this section of the Constitution is:

"No state shall * * * enter into any agreement or contract with another state or with a foreign power."

This section precludes the State from acquiring property or territory outside of the United States.

6. The law of the State of Florida and the prosecution of this appellant is violative of the treaty provisions of the United States Constitution in that it is violative of the treaty provisions in respect of the provisions of the Treaty of Amity and Settlement between the United States of America and Spain under which the United States acquired title to the State of Florida, and is also violative of the sixteen subsequent treaties entered into by the United States of America and various foreign powers set forth in the Transcript of Record at page 12 to 16 inclusive. Each of the said treaties in express language fixing the international boundary of the United States of America and reasserting the same to be no more than one marine league from mean low tide on the mainland or adjacent islands (Agreed Statement of Facts, Transcript of Records, pages 12 and 13).

7. That the law under which the appellant was being prosecuted is void because it violates the decisions of the Political and Executive Departments of the Federal Government on the question of what is and constitutes the ex-

treme limits of the territorial boundaries of the United States, as shown by the Report of the 1929 Conference at Geneva of the League of Nations, issued by the Publication Department of the League of Nations "Conference for the Codification of International Law." It was shown that this volume was offered in evidence and was before the Trial Court showing that beginning on November 8, 1793, and continuing to and including January 23, 1904, the Executive and State Departments have insisted upon adherence to the fact that the international boundary of the United States could be no more than one marine league from mean low tide on the shore line (Transcript of Record, pages 16 to 18 inclusive).

The Motion to Quash the Indictment was overruled and denied (Transcript of Record, page 18).

The cause was tried on January 26, 1940, upon the Agreed Statement of Facts (Transcript of Record, pages 18 to 27 inclusive). This resulted in conviction in the County Court of Pinellas County (Transcript of Record, pages 31 and 32). Appeal was duly perfected from that court to the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, and upon final hearing and determination in that court, which is an intermediate Appellate Court under the laws of Florida, the said intermediate Appellate Court did affirm the judgment and sentence of the appeal from the said County Court, which opinion and judgment of the said Circuit Court of the Sixth Judicial Circuit of Florida affirmed the judgment of the County Court of Pinellas County, Florida (Transcript of Record, pages 3 to 8 inclusive).

An appeal from this order and judgment of the said Circuit Court was perfected to the Supreme Court of the State of Florida, which is the court of final jurisdiction under the Constitution and laws of the State of Florida, and on September 6, 1940, the opinion of the Supreme Court of

Florida was filed (Transcript of Record, pages 36 to 40 inclusive); by which opinion the Supreme Court of Florida affirmed the judgment of the said Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, and remanded the appellant, Lambiris Skiriotes, to custody.

From this judgment of the Supreme Court of Florida this appeal was entered under the provisions of the statute of the United States referred to, and the cause is now pending before this Court for review of that judgment of the Supreme Court of the State of Florida.

While it is true that the rights of this one man, on the face of it, are involved in the litigation, it is also true, as set forth in the Statement as to Jurisdiction filed in this cause, that there are some four thousand citizens and residents of Pinellas County, Florida, who are vitally interested and greatly affected by the result of this cause.

Statement of the Case.

The Appellant, Lambiris Skiriotes, was on the 8th day of March, 1938, arrested by the Sheriff of Pinellas County, Florida, upon a charge of violating Section 4, Chapter 7389, Laws of Florida, enacted in 1917, and renacted as Section 8087, Compiled General Laws of Florida, adopted in 1927, in that he was fishing for sponge six miles from mean low tide in the Gulf of Mexico off the coast of Pinellas County, Florida, and in doing so was using a regular sponge diving suit, helmet and other apparatus, and when arrested was in the act of catching or taking commercial sponges from the Gulf of Mexico at that point.

On the 20th day of January, 1940, Henry S. Baynard, Prosecuting Attorney of the County of Pinellas, State of Florida, filed an Information (Transcript of Record, pages 10 and 11) so charging the defendant.

Thereafter the defendant filed his Motion to Quash the Information upon seven grounds alleging and raising the

question of numerous constitutional rights of the defendant being violated, as set forth in the Motion to Quash (Transcript, pages 11 to 18 inclusive). Upon presentation and argument of the said Motion, the Honorable Jack F. White, Judge of the County Court of Pinellas County, Florida, did overrule and deny the said Motion (Transcript of Record, page 18).

There being no dispute as to the facts between the State of Florida on the one hand and the defendant on the other, a stipulation as to the facts was entered into in open court (Transcript of Record, pages 18 to 27 inclusive).

A jury trial was waived by the State and the defendant, and the cause submitted to the Court under a stipulation of facts (Transcript of Record, pages 18 and 19).

Under the stipulation of facts it was agreed as follows:

That at the time of his arrest Lambiris Skiriotes, the defendant, was using a diver's helmet and suit and other diving equipment and was engaged in taking commercial sponges from the floor of the Gulf of Mexico at the time of his arrest at a point approximately six miles from mean low tide on the mainland and six miles from mean low tide on any adjacent island of the State of Florida.

It was further stipulated that the said point was, according to the territorial boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, within the boundaries as so fixed (Transcript of Record, page 20).

It was further stipulated that under the treaty entered into between the United States of America and Spain, being designated a Treaty of Amity, Settlement and Limits, which was signed at Washington, D. C., February 27, 1819, and being the treaty under which the United States acquired Florida from Spain, that said treaty conveyed to the United States only the uplands of the peninsula of

Florida together with the islands lying adjacent thereto, that this treaty did not convey any part of the waters surrounding the State of Florida or the islands adjacent thereto below mean low tide (Transcript of Record, page 20).

It was further agreed that the other sixteen treaties set forth in the Stipulation of Facts and which treaties were entered into by the United States of America and various foreign countries therein named, each in express terms fixed the international boundary of the United States at three marine miles or one marine league measured from low water mark on the mainland and each declared the remainder of the seas without jurisdiction of the United States and constituting the high seas (Transcript of Record, pages 20 to 23 inclusive).

It was further stipulated that the defendant offer in evidence extracts taken from "League of Nations Conference for the Codification of International Law, Volume II" with reference to the establishment of the international boundary of the United States, beginning with the letter of Mr. Jefferson, Secretary of State, on November 8, 1793, and continuing with the diplomatic correspondence to January 23, 1904, letter written by Mr. Chief Justice Charles E. Hughes, Supreme Court of the United States, who was then Secretary of State (Transcript of Record, pages 23 to 27 inclusive).

Lambiris Skirotes, having entered pleas, was placed on trial on the above stated facts (Transcript of Record, page 27). After argument of counsel and presentation of authorities and consideration by the Court of the various treaties presented to him as well as the evidence offered and filed before him of the diplomatic correspondence of the State Department and the Executive Department, Judge Jack F. White, Judge of said Court, on the 27th day of

January, 1940, entered his judgment and verdict finding the defendant guilty as charged in the Information and did reserve the right to pass sentence after presentation and argument of Motion for New Trial.

Within four days the defendant filed his Motion to Set Aside the Verdict and Grant a New Trial upon the following grounds:

1. Because the Information charges the offense to have been committed on the high seas beyond the jurisdiction of the court.

2. Because the evidence shows conclusively and without dispute that if an offense was committed it was committed on the high seas beyond the territorial limits of Pinellas County, Florida, and outside of the jurisdiction of the court.

3. Because the evidence conclusively shows without controversy that if the crime was committed at all it was committed on the high seas beyond the jurisdiction of any court of the State of Florida (Transcript of Record, pages 28 and 29).

The defendant at the same time filed his Motion in Arrest of Judgment alleging the same grounds (Transcript of Record, pages 29 and 30).

The court overruled and denied the Motion for New Trial and Motion in Arrest of Judgment (Transcript of Record, pages 30 and 31).

The court thereupon passed his sentence and entered judgment against the defendant imposing a fine and in addition a jail sentence (Transcript of Record, pages 31 and 32).

The defendant thereupon filed his Entry of Appeal and Grounds of Appeal to the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, the same

being an intermediate Appellate Court (Transcript of Record, pages 33 to 35 inclusive), his specific grounds of appeal covering the questions before this Court for consideration are for the sake of brevity not here restated.

The cause came on to be heard before the Honorable John U. Bird, one of the Judges of the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, and the said Judge, upon consideration of the transcript of record, briefs of counsel and hearing of oral argument, on the 30th day of April, 1940, did enter and render his judgment (Transcript of Record, pages 3 to 8 inclusive) affirming the judgment of the County Court.

Thereupon the defendant, Lambiris Skiriotes, applied to the Supreme Court of the State of Florida for a Writ of Certiorari transferring the cause to that Court for final appellate jurisdiction (Transcript of Record, pages 1 to 3 inclusive).

This proceeding is authorized by Section 5 of Article 5 of the Constitution of Florida in the following language:

> "The Court shall have the power to issue writs of mandamus, certiorari, prohibition, quo warranto, habeas corpus, and all writs necessary or proper to the complete exercise of its jurisdiction."

The Supreme Court of Florida transferred the cause to that Court by Certiorari, and upon consideration thereof and after oral argument, the Supreme Court of Florida, on the 6th day of September, 1940, entered its judgment sustaining the conviction of the defendant and holding that the Western boundaries of the State of Florida as defined by the Constitution of Florida is fixed at three marine leagues from shore, and thereupon denied the Writ of Certiorari, which opinion appears in the Transcript of Record at pages 36 to 40 inclusive.

This judgment of the Supreme Court of Florida exhausts all remedial rights of the defendant under any provisions of the Constitution or laws of the State of Florida, and from this judgment the cause is before this Honorable Court for review.

Specification of Such of the Assigned Errors as are Intended to be Urged.

By reference to Transcript of Record, pages 59-61 inclusive, it will appear that there are four questions to be argued. The first question to be found at Transcript of Record, pages 59 and 60, is as follows:

> "Appellant insists that under the provisions of Section One of Article Fourteen of the Constitution of the United States and also under the provisions of Article Six of the Constitution of the United States and also under the provisions of Article Two, Section Two, Clause Two of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause One of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause Three of the Constitution of the United States, that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, adopted in 1885, and the law of the State of Florida under which the appellant was prosecuted are invalid, null and void for the (fol. 164) reason that no state of the Union may extend its boundaries beyond the international boundaries of the United States of America."

This question includes Assignment of Error numbered Three, Four, Five, Six, Seven (Tr. of Record, page 48) also Assignment of Error Fourteen (Tr. of Record, page 52).

The Second question (Tr. of Record, page 60) is as follows:

"The appellant insists that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, and the law under which this appellant was prosecuted are invalid and void for the reason that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, conflict with and violate the treaty provisions of the United States of America, as shown by the record."

This question covers and includes Assignments of Error number Eight (Tr. of Record, page 49) also Assignments of Error number Fifteen (Tr. of Record, page 53).

The treaties referred to being listed, Transcript of Record, pages 20-23 inclusive, and omitted here for brevity.

The Third question to be argued (Tr. of Record, page 60) is as follows:

"The appellant insists that even if the Court should consider that the question involved is a political question, that the record shows that under the political rulings of the Executive and State Departments of the Government it has been conclusively established that the international boundary of the United States of America has been definitely and permanently fixed at one marine league from mean low tide on the mainland and adjacent islands, and that, therefore, the Constitution of the State of Florida attempting to fix the boundaries of the State of Florida at nine nautical miles from mean low tide, and the law of the State of Florida under which the appellant was prosecuted are both null and void in that the same violate the rulings (fol. 165) and decisions of the Executive and State Departments of the United States Government."

This question includes Assignments of Error number Nine and number Sixteen.

The various diplomatic correspondence is not here repeated but will be found in Transcript of Record, page 49-51, inclusive.

The Fourth question (Tr. of Record, page 61) is as follows:

> "Appellant insists that the jurisdiction of the Criminal Courts of the State of Florida does not and cannot extend to a greater distance than one marine league from mean low tide on the mainland of the State of Florida and adjacent islands included within the territory of the State of Florida."

This question includes the grounds raised in Assignments of Error No. One (Tr. of Record, page 47),

Assignments of Error Number Two (Tr. of Record, page 48)

Assignments of Error Number Ten (Tr. of Record, page 51)

Assignments of Error Number Eleven (Tr. of Record, page 52)

Assignments of Error Number Twelve and Assignments of Error Number Thirteen (Transcript of Record, page 52)

Assignments of Error Number Seventeen (Tr. of Record, page 53).

ARGUMENT.

Brief Summary.

Lambiris Skiriotes, under the information, was charged with a violation of the provisions of Section 8087 of the Compiled General Laws of Florida, of 1927, which statute is in the following language:

> "8087. (5846.) Diving suits, helmets, etc., used by deep sea divers, prohibited.—It shall be unlawful for any person, persons, firm or corporation to maintain and use for the purpose of catching or taking commercial sponges from the Gulf of Mexico, or the Straits of Florida or other waters within the territorial limits of the State of Florida, diving suits, helmets or other apparatus used by deep sea divers.

> Anyone violating any of the provisions of this section shall be fined in the sum not exceeding five hundred dollars or by imprisonment not exceeding one year, or by both such fine and imprisonment."

The information against him (Tr. of Record, page 10) charges that he was taking sponge from the Gulf of Mexico at a point six nautical miles from mean low tide from the nearest point of the mainland of Florida and any adjacent island thereto, and also using for the purpose, diving suit, helmet and other apparatus used by deep-sea divers.

It will be observed that the quoted statute of the State of Florida does not define what are the territorial waters of the State of Florida. It is therefore, necessary to refer to the Constitution of the State of Florida, adopted in 1885 (which will be found in Volume Five of the Compiled General Laws of Florida, adopted in 1927, at page 4239-4466, inclusive) together with all amendments to the Constitution of Florida now enforced. Article One of the said Constitution fixing the boundaries of the State of Florida is in the following language:

> "The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the River Perdido; from thence up the middle of said river to where it intersects the South boundary line of the State of Alabama, and the thirty-first degree of north latitude; thence due east to the Chattahoochee River; thence down the middle of said river to its confluence with the Flint River; thence straight to the head of the St. Mary's River; thence down the middle of said river to the Atlantic Ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; thence southwestwardly along the edge of the Gulf Stream and Florida Reefs to, and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land to a point west of the mouth of the Perdido River; thence to the place of beginning."

The appellant here admitted the act under date and at the place charged but denied that he was guilty of any crime or offense against any valid law of the State of Florida, and raising the question of the invalidity of the statute and of the constitutional provisions fixing the boundaries of the State of Florida on the Constitutional grounds as shown by Transcript of Record, Stipulation of Facts, page 19-27, inclusive.

The pertinent parts of the Constitution of the United States, the validity of which is asserted in this brief, are as follows: Section One, Article Fourteen, originally adopted as the Fourteenth Amendment to the Constitution of the United States is as follows:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

Also Article 6, sub-paragraph 2 as follows:

> "This Constitution, and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Also Article One, Section 10, Paragraph One as follows:

> "No state shall enter into any treaty, alliance or confederation."

Also Article 2, Section 2, Clause 2 as follows:

> "He (the President) shall have power by and with the advice and consent of the Senate, to make treaties."

Also Article One, Section 10, Paragraph 3 as follows:

> "No state shall * * * enter into any agreement or contract with another state or with a foreign power."

The defendant also properly raised, in order of the proceedings, the further question that the Constitution of Florida, fixing the boundaries of the State of Florida, and the Criminal Act of Legislature under which he was being prosecuted, were in conflict and violative of the treaty provisions of the United States, the said treaties were made and entered into under the authority of the Constitution of the United States as above shown.

The defendant also properly raised in all the courts of the State to which he made appeal, the further question that the boundaries of the State as fixed by the Constitution of the State of Florida, and the statute under which he was prosecuted in this cause, were violative and in conflict with the rulings of the State Department of the United States Government and also the Executive rulings and determination with respect to international boundaries beginning with 1793 and continuing to the present date. Therefore, if the question was a question to be settled by the Political Department of the Government, it had been settled adversely to the contention of the State of Florida.

There was raised, in all of the said courts, the further question that the criminal jurisdiction of the State Courts of the State of Florida could not extend outside of, or beyond, the international boundaries of the United States of America.

The Judge of the County Court of Pinellas County, Florida, convicted and sentenced the prisoner, Lambiris Skiriotes (Tr. of Record, pages 31-32).

On appeal to the Circuit Court of the Sixth Judicial Circuit of Florida, in and for Pinellas County, the Honorable John U. Bird, one of the Judges of the said Court, made and entered his judgment and order affirming the judgment and conviction of Lambiris Skiriotes in the County Court of Pinellas County, Florida (Tr. of Record, pages 3 to 8, inclusive).

On Certiorari to the Supreme Court of the State of Florida, which is the court of final appellate jurisdiction in Florida, the Supreme Court of the State of Florida affirmed the conviction of Lambiris Skiriotes in a written opinion filed September 6, 1940 (Tr. of Record, pages 36-40, inclusive).

The cause is before this Court in an appeal from the last mentioned judgment of the Supreme Court of Florida.

Question I.

(Tr. of Record, pages 59-61)

> "Appellant insists that under the provisions of Section One of Article Fourteen of the Constitution of the United States and also under the provisions of Article Six of the Constitution of the United States and also under the provisions of Article Two, Section Two, Clause Two of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause One of the Constitution of the United States and also under the provisions of Article One, Section Ten, Clause Three of the Constitution of the United States, that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, adopted in 1885, and the law of the State of Florida under which the appellant was prosecuted are invalid, null and void for the (fol. 164) reason that no state of the Union may extend its boundaries beyond the international boundaries of the United States of America."

This question includes Assignments of Error numbered Three, Five, Six, Seven (Tr. of Record, page 48) also Assignment of Error Fourteen (Tr. of Record, page 52).

This Court has said:

> "This Constitution is the supreme law of the land, and no Act of Congress is of any validity which does not rest on authority conferred by that instrument. U. S.

v. Germaine (Me. 1878) 99 U. S. 510, 25 L. Ed. 482. See also, Choctaw Indians (1870) 13 Op. Atty. Gen. 357; Trial of Andrew Johnson, 176."

The United States courts have also said:

"The Constitutional laws of the United States extend and are paramount over all of the territory of every State and cannot be annulled or abridged in any degree by any law of the State or Constitution of the State."

1 Sprague (U. S.) 602 30 Fed. Case No. 18273 Cited in Annotations of the Constitution, Article VI, Clause 2, U. S. C. A.

Gibbons v. *Ogden* (N. Y. 1824) 9 Wheat. 210, 6 L. Ed. 23.

In re Metzger (D. C. N. Y. 1847) 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. 9511.

Turner v. *Baptist Missionary Union* (C. C. Mich. 1852) 5 McLean (U. S.) 344, 24 Fed. Case No. 14251.

El Paso etc. R. Co. v. *Guiterez* (Tex. 1909) 215 U. S. 87, 30 S. Ct. 21, 54 L. Ed. 106.

U. S. v. *Farris* (D. C. Cal. 1927) 19 Fed. (2d) 925.

This Court has also said:

"It must always be borne in mind that the Constitution, laws, and treaties of the United States are as much a part of the law of every state as its own local laws and constitution. This is a fundamental principle in our system of complex national polity. Hauenstein *v.* Lynham (Va. 1879) 100 U. S. 490, 25 L. Ed. 628."

The Supreme Court of the State of Florida has recognized this principle of law:

"The Constitution of the United States within its limited sphere is the supreme law of the land and it is the duty of all officials whether legislative, judicial, executive, administrative or ministerial to so perform every official act as not to violate the constitutional

provisions. Montgomery *v.* State (1908 55 Fla. 97, 45 So. 879."

It may be contended that the law of Florida under which the Appellant was prosecuted is not, on its face, repugnant to the Constitution, and it may also be said that it is seemingly within the power of the State to adopt. This question has been fully settled in the following cases by this Court, where this Court has said:

> "where a state law is assailed as repugnant to the Constitution of the United States, and on its face such Act is seemingly within the power of the state to adopt, but its necessary effect and operation is to usurp a power granted by the Constitution to the Government of the United States, it must follow, from the paramount nature of the Constitution of the United States, that the Act is void. In such a case the result of the test of necessary operation, and effect is to demonstrate the want of power, because of the controlling nature of the limitations imposed on the states by the Constitution of the United States." McCray *v.* U. S. (Ohio 1904) 195 U. S. 60, 24 S. Ct. 769, 49 L. Ed. 78, 1 Ann. Cas. 561. See also Northern Securities Co. *v.* U. S. (Minn. 1904) 193 U. S. 344, 24 S. Ct. 436, 48 L. Ed. 679; Ex parte Siebold (Md. 1879), 100 U. S. 398, 25 L. Ed. 717; New York *v.* Tax Com'rs. (N. Y. 1862), 2 Black 632, 17 L. Ed. 451; Cohen *v.* Virginia (Va. 1821) 6 Wheat. 381, 5 L. Ed. 257; M'Culloch *v.* Maryland (Md. 1819) 4 Wheat. 405, 406, 4 L. Ed. 579; Lick *v.* Faulkner (1864) 25 Cal. 418.

This Court also said in the leading case on this question:

> "Within what are recognized by the law of nations as the territorial limits of States, a state can define its boundaries on the sea and the boundaries of its counties; Massachusetts can include Buzzard's Bay within the limits of its counties."

The court further said:

> "We think it must be regarded as established that, as between nations, the minimum limit of the territorial jurisdiction of a nation over tidewaters is a marine league from its coast; that bays wholly within its territory not exceeding two marine leagues in width at the mouth are within this limit."

The court further said:

> "A state can control fishing to the extent of one marine league from its shores.
>
> Within what is recognized by the law of nations for a State's territorial limits, the State can regulate its boundaries."
>
> *Manchester* v. *Commonwealth*, 139 U. S. 240, 258. 35 L. Ed. 159 11 S. Ct. 559.

The court held in this case conclusively that the State has the right of control of tide-waters only one marine league from shore and could not even control Buzzards Bay lying wholly within the limits of the State except for the fact that the mouth of Buzzard's Bay was less than two marine leagues in width.

The same holding was made with reference to Bering Sea in the following language:

> "An award restricting to a marine league exclusive jurisdiction over Bering Sea was held binding."
>
> *The La Ninfa*, 75 Fed. 513 21 C. C. A. 434.

It was also held that:

> "The jurisdiction of a nation extends into the sea one marine league."
>
> *The Marjorie Bachman*, 4 Fed. (2d) 405;
> *U. S. Bevans*, 3 Wheaton 336, L. Ed. 404.

Mr. Justice Fields speaking for the court said:

"All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores, (Bynk. Qu. Publ. Uris. 61; 1 Azuni, (Mar. Law,) 204, par. 15; Id. p. 185, par 4) and this doctrine has been recognized by the Supreme Court of the United States. (Church *v.* Hubbart) 2 Cranch (6 U. S.) 187, 231. Indeed such waters are considered as a part of the territory of the sovereign."

The Ann, 1 Fed. Case. No. 397.

In Cunard S. S. Co. v. *Mellon,* 262 U. S. 100 (1923),

The court said:

"Various meanings are sought to be attributed to the term territory in the phrase, 'The United States and all territory subject to the jurisdiction thereof.' We are of the opinion that it means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section, show that the term is used in a physical, and not a metaphorical, sense,—that it refers to areas or districts having fixity of location and recognized boundaries. See United States *v.* Bevans, 3 Wheat. 336, 339, 4 L. Ed. 404, 417.

It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or 3 geographical miles. Church *v.* Hubbart, 2 Cranch 187, 234, 2 L. Ed. 249, 264; The Ann. 1 Gall. 61, Fed. Cas. No. 397; United States *v.* Smiley, 6 Sawy. 640, Fed. Cas. No. 16317; Manchester *v.* Massachusetts, 139 U. S. 240, 257, 258, 35 L. Ed. 159, 164, 11 Sup. Ct. Rep. 559; Louisiana *v.* Mississippi, 202 U. S. 1, 52, 50 L. Ed.

913, 931, 26 Sup. Ct. Rep. 408, 571; 1 Kent, Com. 12th ed. 29; 1 Moore, (123) International Law Dig. par. 145; 1 Hyde, International Law, par. 141, 142, 154; Wilson, International Law, 8th ed. par. 54; Westlake, International Law, 2nd ed. pp. 187 et seq.; Wheaton, International 5th Eng. ed. (Phillipson) p. 282; 1 Oppenheim, International Law, 3d ed. par. 185-189, 252. This, we hold, is the territory which the Amendment designates as its field of operation; and the designation is not of a part of this territory but of 'all' of it."

Cunard S. S. Co. v. *Mellon,* 262 U. S. 100 (1923).

We are familiar with the case of *Arch et al.* v. *United States,* decided by this Court May 12, 1926, being Case No. 4498 and involving a libel growing out of a violation of the customs duty. The court sustained the seizure of the vessel without the procuring of a search warrant for the reason that the parties had been guilty of a violation of the Tariff Act of September 21, 1922, paragraph 581. This Court did, however, in the opinion, say:

"If her intention had been only to anchor without the jurisdiction of limits and there to sell to chance customers, the case presented would have been different." Burns *vs.* U. S., 296 Fed. 468; Romano *vs.* U. S., 9th Fed. (2d) 522.

In this case the action was taken against the vessel by the United States Government for the purpose of enforcing and protecting the revenues of the Government and under an Act of Congress and also under the International Law, which has recognized the rights of nations for the protection of its revenues and to prevent smuggling, to search vessels at a distance beyond the territorial waters of the nation.

The United States Court has held:

"A state bordering on the sea may extend its borders to length of one marine league from low-water mark

into the sea. U. S. *vs.* New Orleans Meadows Imp. Co., 173 Fed. 426."

We wish to call the court's attention specifically to the fact that under the provision under which this appellant was prosecuted, it is obvious that his Constitutional rights under Section One of Article 14, originally as the Fourteenth Amendment to the Constitution of the United States, which provides:

> "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States * * * nor deny to any person within its jurisdiction the equal protection of the laws."

It is apparent from the reading of the above in connection with the statute, Section 8087 of Compiled General Laws of Florida (This brief, pp. 14-15) that a citizen of a foreign country residing in the State of Florida, might fish for sponge more than one marine league from mean low tide on the shoreline of the State of Florida, while a citizen of the United States residing in the State of Florida and fishing at the same spot would, under the Florida statute, be subject to arrest and prosecution while the alien so residing in Florida, under the protection of his government, would be immune from arrest on the high seas.

Question II.

(Tr. of Record, page 60)

"The appellant insists that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida of 1885, and the law under which this appellant was prosecuted are invalid and void for the reason that the boundaries of the State of Florida, as fixed by the Constitution of the State of Florida, conflict with and violate the treaty provisions of the United States of America, as shown by the record."

This question covers and includes Assignment of Error number Eight (Tr. of Record, page 49) also Assignment of Error number Fifteen (Tr. of Record, page 53).

The treaties referred to being listed Transcript of Record, pages 20-23 inclusive, and omitted here for brevity.

By referring to the stipulation entered into between the State of Florida and the defendant, Lambiris Skiriotes, (Tr. of Record, page 20 to 23) it will appear that it was stipulated that the treaty of amity, settlement, and limits under which the United States acquired the uplands of the Florida Peninsular but did not acquire any part of the waters surrounding the State of Florida below mean low tide. It was also agreed that seventeen other treaties of the United States entered into between January 23, 1924, and August 8, 1930, each of which is specifically set out in the stipulation, all in express terms fix the international boundaries of the United States at three marine miles or one marine league measured from low water mark on the mainland, and declare the remainder of the seas out of the jurisdiction of the United States and constitute the high seas.

The Treaty of Amity, Settlement and Limits between the United States of America and His Catholic Majesty, Article II, contains the following provision:

> "Article II. His Catholic Majesty cedes to the United States, in full property and sovereignty, all the territories which belong to him, situated to the eastward of the Mississippi, known by the name of East and West Florida. The adjacent islands dependent on said provinces, all public lots and squares, vacant lands, public edifices, fortifications, barracks, and other buildings, which are not private property, archives and documents, which relate directly to the property and sovereignty of the said provinces, are included in this article. The said archives and documents shall

be left in possession of the commissaries or officers of the United States, duly authorized to receive them."

It is, therefofe, apparent that the only territory ceded to the United States was the upland of the mainland of the United States together with the islands and did not include the waters of the Gulf of Mexico further than as has been held by the Courts of the United States to include under the International Law a strip of coastwise waters extending one marine league outward from mean low tide on the upland.

The Constitution of Florida of 1865, Article XII, does not change the boundaries and limits of the State of Florida as fixed in the Constitution of Florida of 1861.

After the Civil War the Congress of the United States refused to seat the delegates from the Southern states which had seceded from the Union; the resolution provided that they should not be seated unless and until the several Southern states had amended their Constitution so as to include the Fourteenth Amendment to the Federal Constitution. This was the only requirement required and pursuant to that requirement the State of Florida in 1868 amended its Constitution so as to include the Fourteenth Amendment and at the same time in other respects amended its Constitution.

By reference to Article I of the Constitution of Florida of 1868 the Boundaries of the State of Florida were set forth in the following language:

"Article I. Boundaries. The boundaries of the State of Florida shall be as follows: Commencing at the mouth of the river Perdido; from thence up the middle of said river to where it intersects the south boundary line of the State of Alabama, and the thirty-first degree of north latitude; then due east to the Chattahoochee river; then down the middle of said river to its

confluence with the Flint river; from thence straight to the head of the St. Mary's river; then down the middle of said river to the Atlantic ocean; thence southeastwardly along the coast to the edge of the Gulf Stream; hence southwestwardly along the edge of the Gulf Stream and Florida Reefs to and including the Tortugas Islands; thence northeastwardly to a point three leagues from the mainland; thence northwestwardly three leagues from the land, to a point west of the mouth of the Perdido river; thence to the place of beginning."

On the 2nd day of March, 1867, an act was passed by the Congress of the United States entitled "An Act to Provide for a More Efficient Government of the Rebel States. (14 Stats. 428)".

Under this Act the states which had seceded were divided into military districts and the states were deprived of their representation in Congress until a State Constitution was adopted including the Fourteenth Amendment therein; and that upon its approval by Congress and upon the state's adoption of the Fourteenth Amendment to the Federal Constitution, the state would be entitled to representation in Congress.

On March 23, 1867, the Congress of the United States passed an act entitled "An Act Supplementary to an Act entitled 'An Act to Provide for a More Efficient Government of the Rebel States' passed March 2nd, 1867, and to facilitate restoration."

This supplementary act required these states to adopt a state constitution in conformity with the terms of the Act; it further provided that after the state constitution had been adopted, a copy should be sent to Congress and if Congress approved the constitution as adopted, the state should then be entitled to representation and her representatives and senators should be admitted to Congress.

On June 25, 1868, Congress passed an Act entitled "An Act to Admit the States of North Carolina, South Carolina, Louisiana, Georgia, Alabama, and Florida to representation in Congress. (15 Stats. 73)."

This Act recited that these states had adopted a constitution in accordance with the Act of March 7, 1867.

The Constitution referred to in the Act of June 5, 1868, as having been adopted by the State of Florida was the Constitution of the State of Florida of 1868. We cannot agree with counsel for appellant that the Congress of the United States specifically accepted, indorsed, or approved any boundaries therein contained of the State of Florida. The only purpose and object of the several acts of Congress above set forth was to force the states to include in their respective constitutions the Fourteenth Amendment to the Federal Constitution and the abolition of slavery; no reference to any other feature or change of the State Constitution of Florida being contained in the said Act; on the contrary, argument of counsel for appellant is inconsistent with the policy of the United States Government beginning in 1794 and continuing to the present time, which policy has been thoroughout the entire period of time both in treaties and in diplomatic letters and relations to insist at all times that one marine league or three nautical miles is and shall be the international boundary and only those waters adjacent to the upland and lying within three miles of mean low tide on the shoreline shall be territorial waters of the United States and that beyond one marine league or three nautical miles all waters shall be considered waters of the high seas, as will more fully appear by the authorities hereinafter cited.

The Constitution of Florida of 1885 which is the Constitution now in force, in Article I, dealing with boundaries gives the same identical description as was contained in the Constitution of Florida of 1868 above quoted.

Assuming that the Congress of the United States, in approving the Constitution of Florida of 1868, had the right to and did by inference accept the boundaries as fixed in that Constitution, which appellant does not in anywise concede; it must also be assumed that if the Congress of the United States also had the right to change that boundary again subsequently to the passage of the original act approving the Constitution of Florida.

This change might have been effected under the terms of Article VI of the United States Constitution in either one of three ways. First, by a provision of the United States Constitution. Second, by an act of Congress. Third, by entering into treaties with foreign powers, which treaties were authorized by the constitutional provisions herein quoted.

This the United States has unquestionably done in each of the sixteen treaties listed in the record (R. 11 to 16 inclusive). All of the treaties are of later date extending from 1924 to 1930. In each of which treaties the United States Government definitely and in plain language insists that the boundaries of the United States shall not by the terms of the treaty be changed but shall remain at one marine league from mean low tide on the shore line.

To our mind it would be entirely absurd to say that under the constitutional limitations the State of Florida could, under any circumstances, be authorized to extend its boundaries, or acquire, own, or control any territory outside of the limits of the United States of America.

The United States courts have repeatedly held:

> "A treaty may supersede a prior Act of Congress, and an Act of Congress may supersede a prior treaty. Cherokee Tobacco (Ark. 1870), 11 Wall. 621, 20 L. Ed. 227. See also Alvarez y Sanchez *v.* U. S. (Ct. Cl. 1910), 216 U. S. 167, 30 S. Ct. 361, 54 L. Ed. 432."

The Supreme Court of the United States has also said:

"By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either, but, if the two are inconsistent, the one last in date will control the other; provided, always, the stipulation of the treaty on the subject is self-executing."

Whitney v. *Robertson* (N. Y. 1888) 124 U. S. 194, 8 S. Ct. 456, 31 L. Ed. 386. See, also, *Rainey* v. *U. S.* (N. Y. 1914) 232 U. S. 310, 34 S. Ct. 429, 58 L. Ed. 617; *U. S.* v. *Lee Yen Tai* (1902) 185 U. S. 220, 22 S. Ct. 629, 45 L. Ed. 878; *Horner* v. *U. S.* (N. Y. 1892) 143 U. S. 570, 12 St. Ct. 522, 36 L. Ed. 266; In re *Ah Lung* (C. C. Cal. 1883) 18 F. 28, 29; *Ex parte Wong Gar Wah* (C. C. A. Cal. 1927) 18 F. (2d) 250, *Certiorari* denied (1727) 48 S. Ct. 21, 72 L. Ed. 409 • • • .

The United States Supreme Court also has said:

"A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our Constitution declares a treaty to be the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provisions. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addresses itself to the political, not the judicial department, and the legislature

must execute the contract before it can become a rule for the court."

Foster v. *Neilson* (La. 1829) 2 Pet. 313, 7 L. Ed. 415. See, also, *Chinese Exclusion* Case (Cal. 1889) 130 U. S. 600, 9 S. Ct. 623, 32 L. Ed. 1068, affirming (C. C. 1888) 36 F. 431; *Chew Heong* v. *U. S.* (C. C. Cal. 1884) 112 U. S. 540, 5 S. Ct. 255, 28 L. Ed. 770; In re *Ah Lung* (C. C. Cal. 1883) 18 F. 28, 29.

The Court has also held:

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Again speaking of the force and effect of a treaty of the United States, it has been said:

"A treaty, assuming it to be made conformably to the Constitution in substance and form, has the effect of repealing all preceding federal law in conflict with it, whether unwritten, as law of nations, or admiralty and common law, or written, as Acts of Congress. Copyright Convention with Great Britain (1854), 6 Op. Atty. Gen. 293."

The Supreme Court of the United States also said:

"When treaty rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute. Head Money Cases, (N. Y. 1884) 112 U. S. 598, 5 S. Ct. 247, 28 L. Ed. 798, affirming (C. C. 1883) 18 F. 135. See, also, in re Metzger (D. C. N. Y. 1847), 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. No. 9511."

If the Congress of the United States in admitting the State of Florida back into the Union and seating its rep-

resentatives in Congress in 1868 did, as may be contended by the State, indirectly, though not in express language, approve the boundaries of Florida fixed in the Constitution of the State of Florida of 1868, then it must also be conceded that by the adoption of the treaties above referred to the Government of the United States has receded from that position and has limited the territorial jurisdiction of the State of Florida to one marine league under the authorities of the cases cited.

It must also be conceded under the authority of the cases cited in the next section of this brief, that the political authority of the United States have also receded from that position and have consistantly at all times adhered to the international boundary of one marine league from mean low tide on the shore line.

By the Act of Congress above quoted requiring the several states that had seceded from the Union to adopt as a part of their State Constitution the Fourteenth Amendment, and no other requirement being made, it must be assumed that the Congress of the United States intended what was said in the Act and had no reference to any other changes in the State Constitution; it must also be assumed that in ratifying the State Constitution, the Congress of the United States was concerned about no matter save and except the requirement of the provision of the act of Congress requiring the inclusion of the Fourteenth Amendment.

It is a self evident fact that if Congress had the right to authorize the extension of the boundaries of the State of Florida, it must necessarily follow that Congress also had the right, and the other departments of Government had the right, at least the Treaty Making Department of the Government had the right, to restrict that boundary to the international boundary fixed in the treaties of the United States.

Question III.

(Tr. of Record, page 60)

"The appellant insists that even if the Court should consider that the question involved is a political question that the record shows that under the political rulings of the Executive and State Departments of the Government it has been conclusively established that the international boundary of the United States of America has been definitely and permanently fixed at one marine league from mean low tide on the mainland and adjacent islands, and that, therefore, the Constitution of the State of Florida attempting to fix the boundaries of the State of Florida at nine nautical miles from mean low tide, and the law of the State of Florida under which the appellant was prosecuted are both null and void in that the same violate the rulings (fol. 165) and decisions of the Executive and State Departments of the United States Government."

This question includes Assignment of Error number Nine and number Sixteen.

The various diplomatic correspondence is not here repeated but will be found in Transcript of Record, page 49-51 inclusive.

We think it a self-evident fact that no State of the United States can own or control any territory lying beyond the limits of the United States. It is also equally true and self-evident that no State can pass criminal laws governing or controling any territory beyond the limits and jurisdiction of the United States.

The Trial Judge in this case had before him a printed volume containing the report of the 1929 Conference at Geneva of the League of Nations, issued by the Publication Department of the League of Nations "Conference for the Codification of International Law". Tome II —Eaux Territoriales; in which they set forth the Diplomatic and Ex-

ecutive correspondence of the United States beginning in 1793 and extending to January, 1904, which is set forth in the Transcript of Record at pages 23-27 inclusive, and for the sake of brevity omitted here. All of which correspondence conclusively shows that the United States has constantly and has continuously adhered to the position that the international boundary of the United States be and is limited to one marine league from mean low tide on the shore line of the territory of the United States.

It may be insisted that the question presented in this case is a political question and should be settled by the political authorities of the United States and counsel for the State may refer to the following cases:

Poole, et al. v. *Fleeger,* 36 U. S. 184;
Virginia v. *Tennessee,* 148 U. S. 503;
Jones v. *United States,* 137 U. S. 202;
Pearcy v. *Stranahan,* 205 U. S. 257;
Louisiana v. *Mississippi,* 202 U. S. 1;
Bergess, Poole, et al. v. *Lessee of John Fleeger,* 36 U. S. 184;
Handley's Lessee v. *Anthony,* 5 Wheat 374;
Foster v. *Neilson,* 2 Pet. 253;
United States v. *Arredondo,* 6 Pet. 710, 735, 743;
Wortham v. *Sullivan,* 147 S. W. 702;
Bedell v. *Loomis,* 11 N. H. Rep. 9;
State of Maine v. *Wagner,* 61 Me. 178;
Harrold et al. v. *Arrington,* 64 Tex. 233;
Guadalupe County v. *Wilson County,* 58 Tex. 228;
Whitney v. *Robertson,* 124 U. S. 190;
Horner v. *United States,* 143 U. S. 570;
Buckner v. *Finley,* 2 Pet. 590;
City of Galveston v. *Menard,* 23 Tex. 357.

All of these cases are cases dealing with the question of disputed land boundary line between the States and none

of them had any relation to the international boundary lines or the boundary lines of the territorial jurisdiction of the United States; we are of the opinion that in cases of this kind it is a question which should be settled by the political authority rather than the courts, although we did not concede that the courts have not final jurisdiction to determine what is the true boundary line.

We are also familiar with the cases of:

United States v. *Ford et al.*, 3 Fed. (2d) 643;
In the matter of the ship North, 37 Canada Supreme Court 385;
The Grace and Ruby, 283 Fed. 475.

These three cases were each decided upon specific terms contained in certain treaties of the United States and in strict accordance with the treaty provisions; thus requiring the force and authority of the treaty-making power of the United States.

The treaty provisions of all of the treaties entered into by the United States limit specifically the boundaries of the United States to one marine league.

This Honorable Court has also held:

> "By the Constitution a treaty is placed on the same footing, and made of like obligation, with an act of legislation. Both are declared by that instrument to be the supreme law of the land, and no superior efficacy is given to either over the other. When the two relate to the same subject, the courts will always endeavor to construe them so as to give effect to both, if that can be done without violating the language of either, but, if the two are inconsistent, the one last in date will control the other; provided, always, the stipulation of the treaty on the subject is self-executing."
>
> *Whitney* v. *Robertson* (N. Y. 1888), 124 U. S. 194, 8 S. Ct. 456, 31 L. Ed. 386.

See also:

Rainey v. *U. S.* (N. Y. 1914), 232 U. S. 310, 34 S. Ct. 429, 58 L. Ed. 617;
U. S. v. *Lee Yen Tai* (1902), 185 U. S. 220, 22 S. Ct. 629, 46 L. Ed. 878;
Horner v. *U. S.* (N. Y. 1892), 143 U. S. 570, 12 S. Ct. 522, 36 L. Ed. 266;
In re Ah Lung (C. C. Cal. 1883), 18 F. 28, 29;
Ex parte Wong Gar Wah (C. C. A. Cal. 1927) 18 F. (2d) 250, certiorari denied (1927), 48 S. Ct. 21, 72 L. Ed. 409.

The United States Supreme Court also has said:

"A treaty is in its nature a contract between two nations, not a legislative act. It does not generally effect, of itself, the object to be accomplished, especially so far as its operation is infra-territorial; but is carried into execution by the sovereign power of the respective parties to the instrument. In the United States a different principle is established. Our Constitution declares ~~a treaty to be~~ the law of the land. It is, consequently, to be regarded in courts of justice as equivalent to an act of the legislature, whenever it operates of itself without the aid of any legislative provisions. But when the terms of the stipulation import a contract, when either of the parties engage to perform a particular act, the treaty addressses itself to the political, not the judicial department, and the legislature must execute the contract before it can become a rule for the court."

Foster v. *Neilson* (La. 1829), 2 Pet. 313, 7 L. Ed. 415.

See also:

Chinese Exclusion Case (Cal. 1889) 130 U. S. 600, 9 S. Ct. 623, 32 L. Ed. 1068, affirming (C. C. 1888) 36 F. 431.
Chew Heong v. *U. S.* (C. C. Cal. 1884), 112 U. S. 540 5 S. Ct. 255, 28 L. Ed. 770.
In re Ah Lung (C. C. Cal. 1883), 18 F. 28, 29.

The court has also held:

"A treaty may supersede a prior Act of Congress, and an Act of Congress may supersede a prior treaty." Cherokee Tobacco (Ark. 1870), 11 Wall. 621, 20 L. Ed. 227.

See also:

Alverez y Sanchez v. *U. S.* (Ct. Cl. 1910), 216 U. S. 167, 30 S. Ct. 361, 54 L. Ed. 432.

Again speaking of the force and effect of a treaty of the United States, it has been said:

"A treaty, assuming it to be made conformably to the Constitution in substance and form, has the effect of repealing all preceding federal law in conflict with it, whether in written, as law of nations, or admiralty and common law, or written, as Acts of Congress. Copyright Convention with Great Britain (1854), 6 Op. Atty. Gen. 293."

The Supreme Court of the United States also said:

"When treaty rights are of a nature to be enforced in a court of justice, that court resorts to the treaty for a rule of decision for the case before it as it would to a statute. Head Money Cases, (N. Y. 1884) 112 U. S. 598, 5 S. Ct. 247, 28 L. Ed. 798, affirming (C. C. 1883) 18 F. 135. See also In re Metzger (D. C. N. Y. 1847) 5 N. Y. Leg. Obs. 83, 17 Fed. Cas. No. 9511."

Question IV.

(Tr. of Record, page 61)

"Appellant insists that the jurisdiction of the Criminal Courts of the State of Florida does not and cannot extend to a greater distance than one marine league from mean low tide on the mainland of the State of Florida and adjacent islands included within the territory of the State of Florida."

This question includes the grounds raised in Assignments of Error No. One (Transcript of Record, page 47) Assignment of Error No. Two (Tr. of Record, page 48) Assignment of Error No. Ten (Tr. of Record, page 51) Assignment of Error No. Eleven (Tr. of Record, page 52) Assignment of Error No. Twelve (Tr. of Record, page 52) Assignment of Error No. Thirteen (Tr. of Record, page 52) Assignment of Error No. Seventeen (Tr. of Record, page 53).

We respectfully insist that the Courts of the State of Florida are wholly without jurisdiction more than one marine league from mean low tide on the West coast of Florida and more than one marine league from any adjacent island on the West coast of Florida, and call the Court's attention to the fact that the maps of the United States show that there are no islands opposite Pinellas County and more than one marine league from mean low tide on the uplands of the State; that the agreed state of facts admit that the act was committed more than one marine league at sea, to-wit, two marine leagues out on the high seas. This being true, this Court said:

> "A state can control fishing to the extent of one marine league from its shores."
>
> "Within what is recognized by the law of nations for a State's territorial limits, the State can regulate its boundaries."
>
> *Manchester* v. *Commonwealth,* 139 U. S. 240, 258, 35 L. Ed. 159, 11 S. Ct. 559.

This Court also said:

> "An award restricting to a marine league exclusive jurisdiction over Bering Sea was held binding."
>
> *The La Ninfa,* 75 Fed. 513, 21 C. C. A. 434.

It was also held:

> "The jurisdiction of a nation extends into the sea one marine league."

The Marjorie Bachman, 4 F. (2d) 405;
U. S. v. *Bevans,* 3 Wheaton 336 4 L. Ed. 404.

Mr. Justice Fields speaking for the Court said:

"All the writers upon public law agree that every nation has exclusive jurisdiction to the distance of a cannon shot, or marine league, over the waters adjacent to its shores, (Bynk. Qu. Pub. Uris. 61; 1 Azuni, (Mar. Law) 204; Par. 15; Id. p. 185, par. 4) and this doctrine has been recognized by the Supreme Court of the United States. (Church v. Hubbart) 2 Cranch (6 U. S.) 187, 231. Indeed such waters are considered as a part of the territory of the sovereign."

The Ann, I Fed. Cas. No. 397.

The court has also said:

"Various meanings are sought to be attributed to the term 'territory' in the phrase, 'The United States and all territory subject to the jurisdiction thereof'. We are of the opinion that it means the regional areas—of land and adjacent waters—over which the United States claims and exercises dominion and control as a sovereign power. The immediate context and the purport of the entire section, show that the term is used in a physical, and not a metaphorical, sense—that it refers to areas or districts having fixity of location and recognized boundaries. See United States *v.* Bevans, 3 Wheat. 336, 339, 4 L. Ed. 404, 417."

"It is now settled in the United States and recognized elsewhere that the territory subject to its jurisdiction includes the land areas under its dominion and control, the ports, harbors, bays, and other inclosed arms of the sea along its coast, and a marginal belt of the sea extending from the coast line outward a marine league, or three geographical miles. Church *v.* Hubbart, 2 Cranch. 187, 234, 2 L. Ed. 249, 264; The Ann, 1 Gall. 61, Fed. Cas. No. 397; United States *v.* Smiley, 6 Sawy. 640, Fed. Cas. No. 16317; Manchester *v.* Mas-

sachusetts, 139 U. S. 240, 257, 258, 35 L. Ed. 159, 164, 11 Sup. Ct. Rep. 559; Louisiana *v.* Mississippi, 202 U. S. 1, 52, 50 L. Ed. 913, 931, 26 Sup. Ct. Rep. 408, 571; 1 Kent, Com. 12th Ed. 29; 1 Moore, (123) International Law Dig. par. 145; 1 Hyde International Law, par. 141, 142, 154; Wilson, International Law, 8th ed. par. 54; Westlake, International Law, 2nd ed. pp. 187, et seq.; Wheaton, International, 5th Eng. ed. (Phillipson) p. 282; 1 Oppenheim, Internation Law, 3d ed. par. 185-189, 252. This, we hold, is the territory which the Amendment designates as its field of operation; and the designation is not of a part of this territory but of 'all' of it."

Cunard S. S. Co. v. *Mellon*, 262 U. S. 100 (1923).

We are familiar with the case of *Arch, et al.* v. *United States*, decided by this court May 12, 1926, being Case No. 4498 and involving a libel growing out of a violation of the customs duty. The court sustained the seizure of the vessel without the procuring of a search warrant for the reason that the parties had been guilty of a violation of the Tariff Act of September 21, 1922, paragraph 581. This Court did, however, in the opinion, say:

> "If her intention had been only to anchor without the jurisdictional of limits and there to sell to chance customer, the case presented would have been different." Burns *v.* U. S., 296 Fed. 468; Romano *v.* U. S., 9th F. (2d) 522.

Conclusion.

The Court has only to look to recent events to determine the policy of the United States Government.

The sea fisheries were wholly destroyed off of the northwest coast of the United States, the salmon off the coast of the States of Washington and Oregon within the last two years are about to be depleted and destroyed by the encroachment of the Japanese Government, the floating can-

neries remaining outside of the three-mile limits and the Government being powerless to prevent their encroachment and having only partially succeeded by diplomatic representation and correspondence to some extent of alleviating the danger.

If the State of Florida has authority and power to extend its boundaries sixty miles into the Gulf of Mexico in order to take in the Florida Straits between Key West and the mainland and take any strip three marine leagues off shore on the entire West Coast of Florida, then where is the limit beyond which the State cannot go?

For the reasons herein set forth we respectfully insist that the judgment of the lower court was not correct and the same should be reversed.

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